

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

WILLIAM A. NIERENHAUSEN,

CIVIL No. 06-1060 PAM/AJB

PLAINTIFF,

v.

**REPORT AND RECOMMENDATION ON THE
COMMISSIONER'S MOTION TO REMAND**

JO ANNE B. BARNHART, COMMISSIONER
OF SOCIAL SECURITY,

DEFENDANT.

JOHN R. KOCH, ESQ., FOR THE PLAINTIFF, WILLIAM A. NIERENHAUSEN.

LONNIE F. BRYAN, ASSISTANT UNITED STATES ATTORNEY, FOR THE DEFENDANT, THE
COMMISSIONER OF SOCIAL SECURITY.

This matter is before the court, United States Magistrate Judge Arthur J. Boylan, on the Commissioner of Social Security's motion for remand. The motion has been referred to this court by the district court for a Report and Recommendation. *See* 28 U.S.C. § 636 (b)(1) and Local Rule 72.1. On March 15, 2006, William A. Nierenhausen (Nierenhausen) filed a complaint with the court requesting the court conduct a judicial review of the decision by the Commissioner of Social Security (Commissioner) denying Nierenhausen's application for disability insurance benefits. On May 5, 2006, prior to filing an answer, the Commissioner filed a motion to remand, the current motion before this court.

In her memorandum in support of the motion to remand, the Commissioner explains that she

wishes to pursue further administrative action in the matter pursuant to a remand under sentence six of Section 205(g) of the Social Security Act, as amended, as the transcript of Nierenhausen's March 3, 2005, oral hearing is not in the administrative record. The Commissioner states that she has been informed that the recording of the hearing is inaudible.

Under 42 U.S.C. 405(g), "[t]he court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security." This type of remand is referred to as sentence-six remand. Here, the Commissioner has asserted that the administrative record is incomplete due to the lack of transcript from the administrative hearing and that the recording of the hearing is inaudible. The court finds that the Commissioner has provided "good cause" why the matter should be remanded.

Accordingly, this court **HEREBY RECOMMENDS** that the Commissioner's Motion to Remand [Docket No. 4] **be granted** and the matter be remanded to the agency for further administrative procedures.

Dated: May 30, 2006

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

NOTICE

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with

the Court before **June 13, 2006**.